

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

EILEEN POLIZZI, FUND MANAGER)
of the TEAMSTERS LOCAL 404)
HEALTH SERVICES AND INSURANCE PLAN,)
Plaintiff,)
)
v.)
)
N&B EXPRESS, INC. and JAMES CAPELLI,)
Defendants,)
)
and)
)
BANK OF WESTERN MASSACHUSETTS,)
Trustee.)

C.A. No. 05-30183-MAP

PLAINTIFF'S MOTION FOR JUDGMENT BY DEFAULT

Now comes the Plaintiff, Eileen Polizzi, Fund Manager of the Teamsters Local 404 Health Services and Insurance Plan, and hereby moves this Honorable Court, pursuant to Federal Rule of Civil Procedure 55(b)(2) for the entry of a judgment by default in the form attached hereto and marked "A" as against James Capelli.

In support of this motion, the Plaintiff respectfully refers this Court to the accompanying affidavit of Eileen Polizzi attached hereto and marked "B" and the affidavit of Matthew E. Dwyer, Esq., attached hereto and marked "C."

Respectfully submitted,
For the Plaintiff,
**Eileen Polizzi, Fund Manager
Of The Teamsters Local 404 Health
Services And Insurance Plan,**
By her attorney,



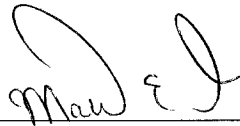
Matthew E. Dwyer (BBO# 139840)
Kathleen A. Pennini (BBO # 654573)
Dwyer, Duddy and Facklam, P.C.
Two Center Plaza, Suite 430
Boston, MA 02108-1804
(617) 723-9777

Date: December 20, 2005

CERTIFICATE OF SERVICE

I, Matthew E. Dwyer, hereby certify that I sent a copy of the foregoing document with attachments, via first-class mail on the 20 of December 2005, to:

James Capelli
29 January Hills Road
Shutesbury, MA



Matthew E. Dwyer

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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of the TEAMSTERS LOCAL 404
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Plaintiff,**

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and

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DEFAULT JUDGMENT

Ponsor, D.J.

This matter came before this Court, upon notice to the Defendant, James Capelli, on the motion of the Plaintiff, Eileen Polizzi, Fund Manager of the Teamsters Local 404 Health Services and Insurance Plan, based upon the Defendant having failed to plead, answer or otherwise defend in this action and whose default having been entered on November 7, 2005.

The affidavit of Eileen Polizzi demonstrates that the Defendant currently owes Plaintiff the sum of \$74,157.46 in delinquent payments, and that the Defendant is not an infant, incompetent person, or in the military service of the United States; The affidavit of Matthew Dwyer demonstrates that the Plaintiff has spent \$ 294.40 in costs, and \$11,150 in attorney's fees in this matter; Bow therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

that the Plaintiff shall recover from Defendant, James Capelli, the sum of \$ 85,556.86, costs to be taxed by the Clerk.

Dated: _____

Hon. Michael Ponsor
UNITED STATES DISTRICT JUDGE

12/05/2005 12:40 FAX

EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**EILEEN POLIZZI, FUND MANAGER
of the TEAMSTERS LOCAL 404
HEALTH SERVICES AND INSURANCE PLAN,
Plaintiff,**

v.

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Defendants,**

and

**BANK OF WESTERN MASSACHUSETTS,
Trustee.**

C.A. No. 05-30183-MAP

**PLAINTIFF'S AFFIDAVIT IN SUPPORT OF ITS
MOTION FOR JUDGMENT BY DEFAULT**

Now comes the undersigned affiant and hereby deposes and states the following:

1. My name is Eileen Polizzi and I am the Fund Manager of the Teamsters Local 404 Health Services and Insurance Plan (hereinafter, "Plan") and the Plaintiff in the above-referenced matter.
2. In 2003, as the Fund Manager of the Plan, I was the Plaintiff in a suit against N & B Express, Inc., filed in the District of Massachusetts (Civil Action No. 03-30307-KFN).
3. In January 2004, the parties in the above-referenced matter, executed an Agreement for Satisfaction of Judgment, which was subsequently approved by the Court, and the suit was dismissed.
4. The above-mentioned Agreement for Satisfaction of Judgment required the Defendant to make monthly payments, by the first of each month for eighteen (18) months, in the amount of \$17,467.35 per month.
5. In paragraph 1B of the above-referenced Agreement for Satisfaction of Judgment, James Capelli personally guaranteed that all payments owed by N & B Express would be made in a timely manner and for the full amount owed, and also agreed that the Plaintiff could take any lawful measure against Mr. Capelli, individually, to ensure that all amount due pursuant to the Agreement for Satisfaction of Judgment were paid in full.

12/05/2005 12:42 FAX

6. Neither James Capelli nor N & B Express have made any payment required by the Agreement for Satisfaction of Judgment since before March 1, 2005.
7. As a result of Mr. Capelli's failure to make numerous payments required by the Agreement for Satisfaction of Judgment, he owes the Plain \$ 74,157.46, plus interest, attorney's fees, and costs.
8. The Defendant is not an infant or incompetent person.

Signed under the pains and penalties of perjury this 6th day of December 2005.


Eileen Polizzi, Fund Manager

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EXHIBIT C

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

EILEEN POLIZZI, FUND MANAGER)
of the TEAMSTERS LOCAL 404)
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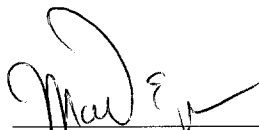
C.A. No. 05-30183-MAP

**AFFIDAVIT OF MATTHEW E. DWYER IN SUPPORT OF
PLAINTIFF'S MOTION FOR JUDGMENT BY DEFAULT**

1. My name is Matthew E. Dwyer. I am a member of the law firm Dwyer, Duddy and Facklam, Attorneys at Law, P.C., located at Two Center Plaza, Suite 430, Boston, Massachusetts 02108. I am admitted to practice before the United States District Court for the District of Massachusetts, the United States Court of Appeals for the First Circuit, and the Massachusetts Supreme Judicial Court. As an attorney with Dwyer, Duddy and Facklam, Attorneys at Law, P.C., I concentrate on public and private sector labor law and litigation under the Employee Retirement Income Security Act of 1974 (ERISA). I have acted as legal representative of the Teamsters Local 404 Health Services and Insurance Plan (hereinafter, "Plan") and Eileen Polizzi for the purpose of the above-captioned action. I have been assisted by Attorney Kathleen Pennini throughout these proceedings.
2. On November 7, 2005, I received a Notice of Default against the Defendant, James Capelli in connection with the above-captioned action to recover \$ 74,157.46 owed to the Plan plus interest, costs and attorneys fees.
3. Section 502(g) of ERISA provides that a plan may be awarded reasonable attorneys fees and costs of the action. 29 U.S.C. §1132(g)(1).
4. The amount of time Ms. Pennini and I have expended in this action for the period of July 31, 2005 through November 7, 2005 has been 58.5 hours.

5. Pursuant to financial arrangements made by this office with the Fund, services performed by this office for it in this action were charged, in increments of 1/10 of an hour, at the rate of \$ 190.00 per hour. Therefore, the amount of attorney's fees incurred by the Fund in this action is \$ 11,115.00 [58.5 hrs X \$ 190.00].
6. The amount of cash disbursements that this office has expended in pursuing this action for the period of July 31, 2005 through November 7, 2005 has been \$ 294.40. Therefore, the total amount of attorney's fees plus costs incurred in this action has been \$ 11,409.40.

Signed under the pains and penalties of perjury of this 14th day of December 2005.


Matthew E. Dwyer, Esq.